

### **DETAILED ACTION**

1. In response to the Preliminary Amendment filed on October 15, 2004, claims 1-10 have been cancelled, and claims 11-20 are pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 11, 12 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Lebherz (US Patent No. 3,782,434).

Regarding claim 11, it is noted that Fig. 1-3 of Lebherz disclose a scrip-type bag, consisting of at least two layers of material (13, 14), of the same shape and same dimensions, that's are superposed and secured to one another along their periphery (column 2, lines 8-9) so as together to define two pockets (column 1, lines 29-30) that can be accessed via a central opening (column 1, line 29), said bag having a longitudinal direction and a transverse direction, characterized in that said opening is made in the longitudinal direction of the bag and in that said material forming at least one of the layers is a fabric that can stretch (column 2, lines 39-40) in the machine direction and/or in the cross direction.

Regarding claim 12, it is noted that Fig. 1-3 of Lebherz disclose that said opening is made in said periphery.

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Regarding claim 17, it is noted that Fig. 2-2a of Lebherz disclose that said bag consists of a single piece of fabric folded over on itself so as to form two superposed thicknesses of fabric (column 2, lines 28-29), said two thicknesses being sewn right along their free edges (column 2, lines 21-32), an opening nevertheless being provided in the middle of the side opposite the side forming the fold line.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lebherz (US Patent No. 3,782,434) in view of Grande (US Patent No. 5,470,109).

It is noted that Lebherz discloses all the claimed limitations except wherein the extension of said stretch fabric is different in the machine direction and in the cross direction, and in that,

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in the bag, the direction of greater extension is used transversely. However, Grande discloses wherein the extension of said stretch fabric is different in the machine direction and in the cross direction (column 3, lines 31-33). Hence, it would have been obvious at the time of the invention to one of ordinary skill in the art to modify the bag of Lebherz with the fabric of Grande. The motivation to combine is to allow the bag to expand to fit articles while not stretching longitudinally toward the ground while carrying. Furthermore, it is noted that having the greater extension being in the transverse direction is obvious design choice in that it simply refers to the orientation of the fabric.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lebherz (US Patent No. 3,782,434) in view of Nattrass (US Patent No. 4,646,357).

It is noted that Lebherz discloses all the claimed limitations except the fabric having a weight per  $\text{m}^2$  of between approximately 60 and 400  $\text{g}/\text{m}^2$ . However, Nattrass discloses the fabric having a weight per  $\text{m}^2$  of between approximately 60 and 400  $\text{g}/\text{m}^2$  (column 1, lines 43-45). Hence, it would have been obvious at the time of the invention to one of ordinary skill in the art to modify the bag of Lebherz with the fabric of Nattrass. The motivation to combine is to provide strength to the bag.

7. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebherz (US Patent No. 3,782,434) in view of Stein (US Patent No. 2,487,951).

It is noted that Lebherz discloses all the claimed limitations except a strip of inelastic material, which does not affect the transverse zone of the bag containing said opening, being

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provided along the periphery of said layers. However, Fig. 1, 2, 5 of Stein disclose a strip of inelastic material (15), which does not affect the transverse zone of the bag containing said opening, being provided along the periphery of said layers (column 1, lines 20-22). Hence, it would have been obvious at the time of the invention to one of ordinary skill in the art to modify the bag of Lebherz with the inelastic material of Stein. The motivation to combine is to provide a sturdier, more resilient edge that will not distort and stretch.

8. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebherz (US Patent No. 3,782,434).

It is noted that Lebherz discloses all the claimed limitations except for the bag has a length of between approximately 70 and approximately 100 cm and a width of between approximately 40 and approximately 60 cm (as per claim 18) and the opening having a length between approximately 10 and approximately 20 cm (as per claim 19). It is noted that this is an obvious matter of design choice, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. The motivation is to provide for carrying items of a certain size.

9. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lebherz (US Patent No. 3,782,434) in view of Ho (US Patent No. 6,068,401).

It is noted that Lebherz discloses all the claimed limitations except the visual or tactile reference means associated with said opening. However, Fig. 5 of Ho discloses the visual or tactile reference means associated with said opening (3, column 2, lines 60-61). Hence, it would

have been obvious at the time of the invention to one of ordinary skill in the art to modify the bag of Lebherz with the visual/tactile reference means of Ho. The motivation to combine is to provide an ease of opening.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Martin (US Patent No. 5,730,287) discloses a stretchable carrier. Van de Pol (US Patent No. 4,664,957) discloses a flexible sack with a fabric weight per m<sup>2</sup> of 100 to 400 g/m<sup>2</sup>. Vogel (US Patent No. 203,678) discloses a purse with a central opening and two pockets at either end. Kaler (US Patent No. 2,528,371) discloses a bag with a central opening and two pockets at either end. Spencer (US Patent No. 355,417) discloses a bag with a central opening and two pockets at either end.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nolan Sandberg whose telephone number is (571) 270-3537.

The examiner can normally be reached on Monday to Friday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Cheng, can be reached on 571-272-4433. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/N. S./  
11/5/07

/Joe H Cheng/  
Supervisory Patent Examiner, Art Unit 4114